

A Chan Chin Ming & Anor v Lim Yok Eng

SUPREME COURT (JOHOR BAHRU) — CIVIL APPEAL NO 02-307-93
PEH SWEE CHIN, EDGAR JOSEPH JR AND MOHAMED DZAIDDIN SCJJ
12 AUGUST 1994

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Damages (Personal Injury or Death) — Fatal accident — Appropriate multiplier — Claim by mother for loss of support in respect of unmarried son — Whether multiplier in s 7(3)(iv)(d) of the Civil Law Act 1956 applicable — Whether multiplier may be altered at court's discretion — Civil Law Act 1956 s 7(3)(iv)(d)

C

Damages (Personal Injury or Death) — Fatal accident — Claim by mother for loss of support suffered on death of 24-year-old unmarried son — Duration of loss of support sustained by a parent compared with duration of loss of support sustained by a widow and her children — Possibility of the son getting married — Whether the possibility had been built into the statutory formula of 16 years' purchase — Civil Law Act 1956 s 7(3)(iv)(d)

D

Damages (Personal Injury or Death) — Fatal accident — Claim by mother for loss of support — Mother received RM750 a month from son, half of which she spent on herself and the other half she spent on her other children — Whether mother could claim loss of support at RM750 a month — Civil Law Act 1956 s 7(1) & (2) — Guardianship of Infants Act 1967 ss 3 & 6

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The plaintiff claimed for loss of support as a result of a fatal accident in which her unmarried 25-year-old son ('the deceased') was involved. The High Court judge awarded her RM144,000 on the basis of the datum figure or basis figure of RM750 per month, not involving a claim for 'lost years'. The said sum was found by the trial judge to be the average monthly sum of money the deceased had given to the plaintiff prior to his death. The defendants appealed.

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The issues before the court were:

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(1) whether the sum of RM750 should be reduced by about half because the plaintiff spent only half of this sum on herself and the other half was spent on three other school-going children of hers; and

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(2) whether in a claim by a parent for loss of support in respect of an unmarried son, the statutorily-fixed number of years' purchase as set out in s 7(3)(iv)(d) of the Civil Law Act 1956 ('the Act') was applicable.

I

Held by a majority, allowing the appeal and reducing the award to RM24,375 (Edgar Joseph Jr SCJ dissenting in part):

(1) Under s 7 of the Act, the persons entitled to claim loss of support in respect of a deceased person are the wife, husband, parent and child only, not including a brother or a sister. The only person entitled to claim in the instant appeal would, therefore, be the plaintiff. Therefore, the sum of RM750 per month as the monthly net loss of support was reduced to RM375 per month.

- (2) (**Per Peh Swee Chin SCJ**) The state of the general system of law relating to a parent's claim as a dependant for loss of support in respect of an unmarried child before the enactment of sub-para (d) was that such loss of support would either cease or be reduced considerably on the almost invariable contingency of the subsequent marriage of the unmarried child. If the judge was right in holding that the possibility of marriage of the deceased had he lived was one of the factors which had been taken into account as having been built into the statutory formula of 16 years' purchase, it would mean that this aspect of the law was swept away or changed. It was highly improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness which was missing in this case. A
- (3) (**Per Peh Swee Chin SCJ**) The numbers of years' purchase was reduced to seven years and from that, the court deducted pre-trial loss of support up to the date of trial which would ordinarily have been awarded. The future loss of support was thereby reduced to RM24,375. B
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Cases referred to

- Berry v Humm & Co* (1915) 1 KB 627 (refd) E
- Beswick v Beswick* [1968] AC 58; [1967] 2 All ER 1197; [1967] 3 WLR 932 (refd)
- Burgess v Florence Nightingale Hospital for Gentlemen* [1955] 1 QB 349; [1955] 1 All ER 511; [1955] 2 WLR 533 (refd)
- Davies v Powell Duffryn Associated Collieries (No 2)* [1942] AC 601 (refd) F
- Dirkje Peiternella Halma v Mohd Noor bin Baharom & Ors* [1990] 3 MLJ 103 (refd)
- George Wimpey & Co Ltd v British Overseas Airways Corp* [1955] AC 169; [1954] 3 All ER 661; [1954] 3 WLR 932 (refd)
- Graham v Dodds* [1983] 2 All ER 953; [1983] 1 WLR 808 (refd) G
- Lai Look Sow v Osman bin Abbas* (Kota Bharu Civil Suit Nos 23 and 1 of 1972) (unreported) (refd)
- Pang Ah Chee v Chong Kwee Sang* [1985] 1 MLJ 153 (refd)
- Société Banque v Girdhari* AIR 1940 PC 90 (refd)
- Sykes v North-Eastern Railway* 32 LT 199; (1875) 44 LJCP 191 (refd) H
- (4) (**Per Edgar Joseph Jr SCJ** (dissenting in part)) In enacting the detailed provisions of s 7(3)(iv)(d), Parliament had intended to take away the discretion of the court to select the appropriate multiplier in assessing loss of earnings of a deceased person for purposes of a claim for loss of support under s 7(1). Otherwise, the court could rewrite the statute or brush aside explicit statutory provisions and select, in the exercise of its discretion, a suitable multiplier. I

- A (5) (Per **Edgar Joseph Jr SCJ**) Contingencies such as the probability of the deceased marrying had he not died in the accident and, as a result, his contributions for the support of his mother ceasing or being considerably reduced, have been built into the statutory formula of 16 years.
- B (6) (Per **Edgar Joseph Jr SCJ**) The court is not at liberty to reduce the number of years' purchase from 16 years to seven years, or at all. For the same reason, the court has no discretion to make any deductions from the number of years' purchase, the period for which the court might have awarded pre-trial loss of support up to the date of trial.
- C (7) (Per **Edgar Joseph Jr SCJ**) As the court has no discretion to alter the statutory multiplier, then equally, it cannot indirectly do so by reducing the multiplicand.

Cases referred to

- D *Cartledge v E Jopling & Sons Ltd* [1963] AC 758; [1963] 1 All ER 341; [1963] 2 WLR 210 (refd)
Gwynne v Burnell [1840] 7 Cl & Fin 572 (refd)
Magor and St Mellons Rural District Council v Newport Borough Council [1952] AC 189; [1951] 2 All ER 839 (refd)
- E *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82 (refd)
Overseas Tankship (UK) v Morts Dock and Engineering Co (The Wagon Mound) [1961] AC 388; [1961] 1 All ER 404; [1961] 2 WLR 126 (refd)
- F *Stock v Frank Jones (Tipton) Ltd* [1978] 1 All ER 948; [1978] 1 WLR 231 (refd)
Sunprinting and Publishing Association v Remington Paper and Power Co Inc (1923) 130 NE 470 (refd)
Sutters v Briggs [1922] 1 AC 1 (refd)
West Coast Hotel Co v Parrish (1937) 300 US 379 (refd)

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Per curiam:

- (1) (Per **Peh Swee Chin SCJ**) The introduction of the words, 'loss of support' into s 7(3)(iv)(d) of the Act had not added anything new to the state of the law, but only incorporated what the courts had always decided before such an addition.
- H (2) (Per **Peh Swee Chin SCJ**) The duration of loss of support sustained by a parent in respect of an unmarried child ordinarily and simply cannot be ever so long as the duration of the loss of support sustained by a widow and her children in respect of her husband, for example.
- I (3) (Per **Edgar Joseph Jr SCJ**) The fact that the deceased had provided his mother with funds not only to maintain herself but also to enable her to carry out the duty imposed upon her by ss 3 and 6 of the Guardianship of Infants Act 1961, being

responsible for the support, health and education of her school-going children, would afford no grounds to justify the court in expanding the class of person specified under s 7(2) of the Act as being entitled to make a claim for loss of support. Additionally, a claim to increase the value of the loss of support based upon the consideration of such obligations of the mother would not have been reasonably foreseeable by the defendant tortfeasors and would, therefore, be bad for remoteness.

[Bahasa Malaysia summary]

Plaintif telah menuntut untuk kehilangan tempat bergantung disebabkan oleh suatu kemalangan yang membawa maut dalam mana anak beliau yang masih belum kahwin dan yang berumur 25 tahun ('si mati') terlibat. Hakim Mahkamah Tinggi telah memberi beliau award sebanyak RM144,000 atas dasar jumlah datum atau jumlah dasar sebanyak RM750 sebulan, tidak termasuk tuntutan untuk 'lost years'. Hakim perbicaraan berpendapat bahawa jumlah itu merupakan purata jumlah wang bulanan yang diberi oleh si mati kepada plaintiff sebelum si mati meninggal dunia. Defendan telah membuat rayuan.

Isu di hadapan mahkamah adalah:

- (1) sama ada jumlah RM750 sepatutnya dikurangkan sebanyak separuh kerana plaintiff hanya menggunakan separuh daripada jumlah itu untuk dirinya sendiri dan menggunakan separuh yang lain untuk tiga orang anaknya yang masih bersekolah; dan
- (2) sama ada di dalam suatu tuntutan oleh seorang ibu bapa untuk penyaaran berkaitan dengan seorang anak lelaki yang belum berkahwin, jumlah tahun belian ('years' purchase') yang telah ditetapkan oleh undang-undang sepertimana yang telah diperuntukkan di dalam s 7(3)(iv)(d) Akta Undang-Undang Sivil 1956 ('Akta itu') terpakai.

Diputuskan oleh majoriti, membenarkan rayuan itu dan mengurangkan jumlah award itu kepada RM24,375 (Edgar Joseph Jr HMA bertentangan sebahagian):

- (1) Di bawah s 7 Akta itu, orang yang berhak membuat tuntutan untuk kehilangan tempat bergantung berhubungan dengan seseorang si mati adalah isteri, suami, ibu bapa dan anak sahaja, tidak termasuk adik-beradik. Oleh itu, satu-satunya orang yang berhak membuat tuntutan di dalam rayuan ini adalah plaintiff. Dengan itu, jumlah RM750 sebulan sebagai kehilangan penyaara bersih bulanan dikurangkan kepada RM375 sebulan.
- (2) (Oleh **Peh Swee Chin HMA**) Keadaan sistem undang-undang am yang berkaitan dengan tuntutan seorang ibu bapa sebagai seorang tanggungan untuk kehilangan tempat bergantung berkaitan dengan seseorang anak yang belum berkahwin sebelum penggubalan perenggan-kecil (d) adalah bahawa kehilangan tempat bergantung sedemikian akan dihentikan atau dikurangkan

- A sebahagian besarnya apabila kontingensi yang hampir tetap berlaku apabila anak yang belum kahwin itu berkahwin. Jika hakim itu betul apabila membuat keputusan bahawa kemungkinan si mati itu berkahwin sekiranya beliau masih hidup merupakan suatu faktor yang telah diambil kira dalam penetapan formula
- B statutori 16 tahun belian itu, ini akan bermakna bahawa aspek undang-undang ini telah dihapuskan atau ditukarkan. Parlimen tidak mungkin menyimpang daripada sistem undang-undang am tanpa menyatakan tujuannya secara teramat jelas yang tidak wujud di dalam kes ini.
- C (3) (Oleh **Peh Swee Chin HMA**) Bilangan tahun belian telah dikurangkan kepada tujuh tahun dan daripada itu, mahkamah telah menolak kehilangan tempat bergantung sebelum perbicaraan sehingga tarikh perbicaraan yang biasanya telah diawardkan. Oleh itu, kehilangan tempat bergantung telah dikurangkan kepada RM24,375.
- D (4) (Oleh **Edgar Joseph Jr HMA** (bertentangan sebahagiannya)) Apabila mengubal peruntukan terperinci s 7(3)(iv)(d), Parlimen bertujuan untuk menghilangkan budi bicara mahkamah untuk memilih pengganda yang sesuai apabila mentaksirkan kehilangan mata pencarian seseorang si mati untuk tujuan tuntutan bagi kehilangan tempat bergantung di bawah s 7(1). Jikalau tidak, mahkamah boleh menulis semula statut itu atau mengetepikan peruntukan statutori yang sangat jelas dan memilih pengganda yang sesuai dengan menggunakan budi bicaranya.
- E (5) (Oleh **Edgar Joseph Jr HMA**) Kontingensi seperti kemungkinan si mati itu berkahwin sekiranya beliau tidak meninggal dunia di dalam kemalangan itu dan, dengan yang demikian, penyumbangan beliau bagi menyara ibunya akan dihentikan atau dikurangkan secara substansial, telah dimasukkan ke dalam formula statutori 16 tahun itu.
- F (6) (Oleh **Edgar Joseph Jr HMA**) Mahkamah tidak mempunyai kebebasan untuk mengurangkan bilangan tahun belian daripada 16 tahun ke tujuh tahun, walau sedikitpun. Untuk sebab yang sama, mahkamah tidak mempunyai bidang kuasa untuk membuat sebarang pemotongan bagi tempoh yang mahkamah boleh memberi award sebelum perbicaraan untuk kehilangan tempat bergantung sehingga tarikh perbicaraan, daripada bilangan tahun belian.
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- H (7) (Oleh **Edgar Joseph Jr HMA**) Oleh kerana mahkamah tidak mempunyai budi bicara untuk menukar pengganda statutori, dalam cara yang sama, ia tidak boleh berbuat demikian secara tidak langsung dengan mengurangkan 'multiplicand'.
- I

Per curiam:

- (1) (Oleh **Peh Swee Chin HMA**) Pengenalan perkataan, 'kehilangan tempat bergantung' ke dalam s 7(3)(iv)(d) Akta itu tidak

- menambahkan apa-apa yang baru kepada keadaan undang-undang, tetapi hanya mengandungi apa yang selalu diputuskan oleh mahkamah sebelum penambahan sedemikian. A
- (2) (Oleh **Peh Swee Chin SCJ**) Jangkamasa kehilangan tempat bergantung yang dialami oleh seseorang ibu bapa berkaitan dengan seseorang anak yang belum berkahwin biasanya tidak begitu panjang berbanding dengan, sebagai contoh, jangkamasa kehilangan tempat bergantung yang dialami oleh seorang balu dan anak-anaknya berkaitan dengan suaminya. B
- (3) (Oleh **Edgar Joseph Jr SCJ**) Fakta bahawa si mati telah memberi emaknya wang bukan sahaja untuk menyara dirinya sendiri tetapi juga membolehkannya untuk menjalankan tugasnya di bawah ss 3 dan 6 Akta Penjagaan Budak 1961, sebagai orang yang bertanggungjawab untuk menyara, menjaga kesihatan dan pendidikan anak-anaknya yang masih bersekolah, tidak memberikan justifikasi kepada mahkamah untuk memperluaskan kelas orang yang dinyatakan di dalam s 7(2) Akta itu sebagai berhak membuat tuntutan bagi kehilangan tempat bergantung. Lebih-lebih lagi, suatu tuntutan untuk menambahkan nilai kehilangan tempat bergantung berdasarkan pertimbangan obligasi emak itu tidak boleh diramal secara munasabah oleh defendan pelaku tort dan oleh itu, adalah cacat kerana di luar duga.] C D E

Notes

For cases on dependency claims in fatal accidents, see 6 *Mallal's Digest* (4th Ed) paras 267–268; [1989] *Mallal's Digest* 676; [1990] *Mallal's Digest* 514; [1989] *Mallal's Digest* 851–853. F

Complete list of cases referred to

- Berry v Humm & Co* [1915] 1 KB 627
- Beswick v Beswick* [1968] AC 58; [1967] 2 All ER 1197; [1967] 3 WLR 932
- Burgess v Florence Nightingale Hospital for Gentlewomen* [1955] 1 QB 349; [1955] 1 All ER 511; [1955] 2 WLR 533 G
- Cartledge v E Jopling & Sons Ltd* [1963] AC 758; [1963] 1 All ER 341; [1963] 2 WLR 210
- Davies v Powell Duffryn Associated Collieries (No 2)* [1942] AC 601
- Dirkje Peiternella Halma v Mohd Noor bin Baharom & Ors* [1990] 3 MLJ 103 H
- George Wimpey & Co Ltd v British Overseas Airways Corp* [1955] AC 169; [1954] 3 All ER 661; [1954] 3 WLR 932
- Graham v Dodds* [1983] 2 All ER 953; [1983] 1 WLR 808
- Gwynne v Burnell* [1840] 7 Cl & Fin 572
- Lai Look Sow v Osman bin Abbas* (Kota Bharu Civil Suit Nos 23 and 1 of 1972) (unreported) I
- Magor and St Mellons Rural District Council v Newport Borough Council* [1952] AC 189; [1951] 2 All ER 839

- A *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82
Overseas Tankship (UK) v Morts Dock and Engineering Co (The Wagon Mound) [1961] AC 388; [1961] 1 All ER 404; [1961] 2 WLR 126
- B *Pang Ah Chee v Chong Kwee Sang* [1985] 1 MLJ 153
Societie Banque v Girdhari AIR 1940 PC 90
Stock v Frank Jones (Tipton) Ltd [1978] 1 All ER 948; [1978] 1 WLR 231
Sunprinting and Publishing Association v Remington Paper and Power Co Inc (1923) 130 NE 470
- C *Sutters v Briggs* [1922] 1 AC 1
Sykes v North-Eastern Railway 32 LT 199; (1875) 44 LJCP 191
West Coast Hotel Co v Parrish (1937) 300 US 379

Legislation referred to

- D Civil Law Act 1956 s 7
 Guardianship of Infants Act 1967 ss 3, 6
 Courts of Judicature Act 1873 [UK]

Appeal from: Civil Suit No 23–(25)–27 of 1992 (High Court, Muar)

- E *KS Dass* (*N Chandra Mohan* with him) (*K Sila Dass & Partners*) for the appellants.
JF Pereira (*I Pereira* with him) (*MS Miranda & Co*) for the respondent.

F *Cur Adv Vult*

- Peh Swee Chin SCJ** (delivering the majority judgment of the court): The notice of appeal to the Supreme Court that was filed relates only to that part of the learned trial judge's decision as concerns the award against the defendants of the loss of future support in the sum of RM144,000 on the basis of the datum figure or basis figure of RM750 per month in a fatal accident claim, not involving a claim for 'lost years'.
- G There is more than meets the eye from this seemingly short run-of-the-mill appeal for it raises several points, one of which is polemical, ie as to whether in a claim by a parent for loss of support in respect of an

- H unmarried son, the statutorily-fixed number of years' purchase as set out in s 7(3)(iv)(d) of the Civil Law Act 1956 is applicable (hereafter 'subpara (d)'). We now deal with the points.

- I In the claim by a mother for loss of support herein in a fatal accident case in respect of an unmarried son, the learned trial judge has assessed, from the evidence, the loss of support sustained by the mother at RM750 per month which, of course was the basic figure which could be and was turned into a lump sum by taking a certain number of years' purchase. The said sum was found by the learned trial judge to be the average monthly sum of money the deceased son had given her prior to his death.

First, a complaint was made by learned counsel for the appellants/defendants (hereafter 'the defendants') before his Lordship and before us here to the effect that the said sum of RM750 should be reduced by about half because of the said mother's own evidence that she spent only half of this sum on herself and the other half was spent on three other school-going children of hers, the siblings of the deceased unmarried child. The learned trial judge refused to budge from the position taken that the basic figure for assessing the loss of support would remain at RM750 per month for several reasons.

This submission was dealt with by the learned trial judge in the following manner. It was said that sub-para (d) was amended to include a new expression; 'loss of support' with effect from 1 October 1984, as compared with the old s 7 which provided for 'damages from death'. It was further said that 'the word "support" should not be restricted to food or sustenance for the plaintiff but should equate with the pecuniary benefit the plaintiff received from her son so as to enable her to lead a certain life-style'. The deceased son had given her the sum not only to maintain herself but also for the maintenance of her three other minor children, for whose maintenance by virtue of the Guardianship of Infants Act 1967, the said mother was responsible, (the father in question having predeceased the said deceased son), and in any event what the said mother did with the money was of no concern to the tortfeasors.

In my view, the introduction of the words, 'loss of support', has not added anything new to the state of the law, but only incorporated what the courts had always decided before such an addition that such damages were in fact loss of support. Had the section incorporated the formula for assessment of such loss of support as explained by Lord Wright in *Davies v Powell Duffryn Associated Collieries (No 2)* [1942] AC 601 at p 617, it would not have similarly changed the law.

The ground of relying on the Guardianship of Infants Act 1967, in our view is unacceptable, for reasons which will become apparent.

As regard the other reasoning of the learned trial judge that what the mother did with the money given by her son in his lifetime was of no concern to the defendants, it sounds quite rational, and was in fact reinforced by an unreported judgment — *Lai Look Sow v Osman bin Abbas* (Kota Bharu Civil Suit Nos 23 and 1 of 1972) in which, in a similar situation, a son's contribution was adopted intact without deduction.

However, under s 7 of the Civil Law Act 1956, the persons entitled to claim such loss of support in respect of a deceased person are the wife, husband, parent and child only, not including a brother or a sister. The only person entitled to claim in the instant appeal would, therefore, be the surviving parent, ie the said mother, unlike in England, where the class of persons entitled to claim under corresponding legislation expressly includes a brother and a sister. Therefore, it would assist nobody to say that the said mother was bound by law to support her other minor children.

Further, in our opinion, loss of support is for all practical purposes translated into financial loss sustained by a dependant. Having regard to

- A the class of persons entitled as stated above, it is a logical conclusion to say that a plaintiff can only claim in such a case for financial loss which he sustains as a dependant and not in any other way.

- The question then arises is that whether such a logical conclusion is supported by cases in the reports, other than the unreported case mentioned above. There are unfortunately rather few cases on it, and even then, they are only persuasive and not directly on the point. In *Burgess v Florence Nightingale Hospital for Gentlewomen* [1955] 1 QB 349; [1955] 1 All ER 511; [1955] 2 WLR 533, a husband and his wife were professional dancing partners, and the wife died due to the negligence of a surgeon. The husband claimed under the corresponding legislation in England to our s 7 of the Civil Law Act 1956. It was held to the effect that the basis for damages in principle was that the benefit must be a benefit arising from the relationship between the parties, as husband and wife, and the husband could not claim for loss of services of his wife as a dancing partner and in the end could claim only a modest sum for the deceased wife's contribution out of her share of earnings to the joint living expenses and also for loss of services in performing household duties, following the case of *Sykes v North-Eastern Railway* 32 LT 199; (1875) 44 LJCP 191.

- It is implicit from the judgment that the husband could not claim, as loss of support, the deceased wife's share of earnings from such partnership as professional dancing partners but only a small portion of the relevant sum attributable to her as representing her contribution to the sum for joint living expenses of both husband and wife. In other words, the husband could claim only such loss of support as sustained as a dependant from the wife's contribution to the joint living expenses and not her separate income as a dancing partner. The court there also awarded a sum for the loss of the wife's services in the discharge of household duties.

- In *Sykes*, the deceased son was, prior to his death, working for his father who fully paid the deceased son for work done. It was held when claiming for loss of support, that the father, though normally entitled to claim such loss of support, could not claim it as what the father lost was the benefit of fully-paid services in his capacity as an employer to his son, not, I would like to add, as a dependant, and that it would have been different if the said father had enjoyed the services from his son, rendered gratuitously as gratuitous services are equivalent to a pecuniary benefit, please see *Berry v Humm & Co* [1915] 1 KB 627. In *Berry's* case, the gratuitous services were rendered by a wife at home but I do not think that whether such gratuitous services were rendered at home or at the work site would make any difference between them for sustaining such a claim.

- The cases of *Sykes* and *Burgess* tend to lend great weight to the logical conclusion referred to above, analogically, of course, for the situation revealed in our instant appeal did not exist there so they could not be expected to have addressed themselves to the issue concerned here. It is regretted that these two cases were not cited to the learned trial judge.

I, therefore, agree with the learned counsel for the defendants that the sum of RM750 per month as the monthly nett loss of support be reduced, and I accordingly reduce it to RM375 per month.

Another unusual situation has occurred. The defendants have conceded at the trial that the multiplier for calculating the lump sum for loss of future support should be 16 years of purchase, the deceased being 25 years of age at the time of the fatal accident, following the statutorily fixed multiplier as mentioned in sub-para (d) which is set out below:

- 7(3) The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1).

Provided that —

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(iv) in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall:

- ...
(d) take into account that in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

Having so conceded, it was then surprisingly submitted by the defendants that such loss of dependency (ie support) would have reduced or ceased in the event of the deceased son getting married had he lived. Such ordinarily unacceptable submission in view of the said act of conceding aforesaid was made both in the court below and before us. Could the defendants do so?

What was conceded about the multiplier being 16 years' purchase, in the court below, appears clearly to amount to an admission on a point of law. However, on a point of law, a court is not precluded from deciding on the rights of the parties on a true view of the law, and the admission is not binding on it. See *Societe Banque v Girdhari* AIR 1940 PC 90. Such surprising submission of the defendants could then be considered on its merits.

The learned trial judge does not appear to have possibly been influenced by this conceding on the part of the defendants, for arguments were heard and the learned trial judge went on further to hold that the possibility of marriage of the deceased son had he lived was one of the factors which had been taken into account as 'having been built into the statutory formula of 16 years' purchase'. In other words, the learned trial judge felt bound to adopt the statutory 16 years of purchase for converting the basic figure referred to above into a lump sum. Should he feel bound to do so?

Let us examine sub-para (d) reproduced above. It deals with first, the assessment of loss of earnings, and not, be it noted, loss of support. They

- A are related to each other but are yet distinctly apart, for it will be remembered that the earnings of the deceased, or the amount of such earnings by the deceased by virtue of his death is merely the starting point in assessing the loss of support sustained by a dependant, before taking account of personal expenses of the deceased and contingencies, see *Davies v Powell Duffryn Associated Collieries (No 2)* [1942] AC 601 at p 617.

- B The distinctiveness of the loss of support from the loss of earnings is worth emphasizing once more because it is an indisputable fact that the duration of loss of support sustained by a parent in respect of an unmarried child ordinarily and simply cannot be ever so long as the duration of the loss of support sustained by a widow and her children in respect of her husband, for example. Please see the Federal Court's decision on this point to the same effect in *Pang Ah Chee v Chong Kwee Sang* [1985] 1 MLJ 153 in which the number of years' purchase fixed by the court of first instance at 17 years, was reduced to seven years for a mother who claimed similarly as a dependant in respect of her deceased unmarried child. This Federal Court case was decided before sub-para (d) came into force, it should be noted.

- D Having regard to the state of the general system of the law before the coming into force of sub-para (d) on 1 October 1984, sub-para (d) seems to be tailor-made for a claim by a spouse and children as dependants in respect of a deceased spouse, because under the general system of law, both before and after the enactment of sub-para (d), the duration of a claim for loss of support is usually as long as the deceased's loss of earnings which would have been earned had the deceased lived.

- E On the other hand, the state of the general system of law relating to a parent's claim as a dependant for loss of support in respect of an unmarried child before the enactment of sub-para (d) was that such loss of support would either cease or be reduced considerably on the almost invariable contingency of subsequent marriage of such unmarried child. If the learned judge was right, it would mean that this aspect of the law was swept away or changed.

- F There is one important principle of statutory interpretation which has been applied repeatedly over the years. It is this, that it is in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness. I find such clearness missing. To give an example, Britain's Courts of Judicature Act 1873 provided that an injunction might be granted in all cases in which the court considered it 'just and convenient', it was held by the House of Lords in *Beswick v Beswick* [1968] AC 58; [1967] 2 All ER 1197; [1967] 3 WLR 932 to the effect that such general words would still mean that such injunction might be granted only in the usual infringement of recognized legal or equitable right. In other words, it is a fairly strong presumption against alteration in the law except with such irresistible clearness expressed.

I do not think it will come to this that arguments on this question of interpretation are evenly balanced, and if it were so, I would agree also 'that interpretation should be chosen which involves the least alteration of

the existing law', per Lord Reid in *George Wimpey & Co Ltd v British Overseas Airways Corp* [1955] AC 169 at p 191; [1954] 3 All ER 661 at pp 672-673; [1954] 3 WLR 932 at p 947.

In the result, I am unable to agree with the view of the learned trial judge that sub-para (d) applied to the claim in the instant case, ie the claim of a parent as dependant for loss of support in respect of a deceased unmarried child.

I, therefore, agree with the contention of the learned counsel for the defendants that the number of years' purchase should be reduced and I hereby reduce it to seven years, after taking into account the contingencies and circumstances in this case.

I assume that contingencies had been taken into account by the legislature in fixing the statutory numbers of years' purchase as past recent local cases do not indicate the lump sum obtained by basing on the basic figure or monthly net loss and applying the number of years' purchase has been further taxed down by taking account of contingencies. A court can either take account of such contingencies in fixing the number of years' purchase; or doing so on the lump sum after applying the number of years' purchase to the basic figure. Either way is permissible. It is in most cases now academic as legislature has fixed the number of years' purchase so long it is borne in mind that contingencies have already been taken into account in fixing the statutory numbers of years' purchase for assessing a man's loss of earnings.

There is another point. Having found the number of years' purchase, (or some people prefer to call it a multiplier), for a case like the instant case, after of course taking account of the contingencies; then from the number of years should be deducted the period, for which the court has ordinarily awarded pre-trial loss of support up to date of trial, before it is used to convert the basic monthly loss into a lump sum which shall carry no interest. This is in accordance with *Graham v Dodds* [1983] 2 All ER 953; [1983] 1 WLR 808.

Here, the date of trial was 2 June 1993 when judgment was given at the conclusion of the trial. The deceased unmarried son died on 5 November 1991. The seven years should be reduced by the period from 5 November 1991 to 2 June 1993, leaving a period of 65 months. The lower court has not deducted this period.

In converting the basic figure of monthly net loss into a lump sum by taking a number of years' purchase, whether such number of years' purchase is arrived at by assessment in each individual case, or is fixed statutorily with effect from 1 October 1984 for assessing a man's loss of earnings, should annuity tables be used because of the word 'purchase' or should such number of years' purchase be treated as a direct mathematical multiplier?

This court in *Dirkje Peiternella Halma v Mohd Noor bin Baharom & Ors* [1990] 3 MLJ 103 when applying the statutorily fixed number of 16 years' purchase, treated it as a direct multiplier, and for the sake of uniformity, I would follow suit. The future loss of support would be RM375 x 65 (months) = RM24,375.

A The appeal of the defendants is therefore allowed to the extent that the future loss of support would be reduced to RM24,375 which shall carry no interest with costs here but in the court below, the costs remains payable by the defendants to the plaintiff, and the order of the learned trial judge dated 2 June 1993 is varied accordingly.

B I have since been informed that a member of the panel of judges for the sitting during which the above appeal was heard, proposes to deliver a dissenting judgment, it is necessary that I should add that Mohamed Dzaiddin SCJ, the other member of the panel, agrees with this judgment and has nothing to add. This judgment is therefore to be regarded as a majority judgment that determines the above appeal.

C

Edgar Joseph Jr SCJ (delivering the partly dissenting judgment): This was the defendants' appeal against the quantum of damages only from the judgment of Richard Talalla J, in a running down case, in which the plaintiff, a widow and housewife ('the mother'), had lost her 25-year-old son ('the deceased'), upon whom she was dependant for support, in a road accident, her claim being a dependency claim under s 7(3) of the Civil Law Act 1956 ('the Act').

D

E At the outset, the judge pointed out that senior counsel for the defendants had *conceded* the mother's claim that the deceased's earnings per month were RM1,500 and that the statutory multiplier was 16 years — no doubt — having regard to the provisions of proviso (iv)(d) to s 7(3) of the Act which are hereinafter reproduced and discussed.

F

The judge next referred to the familial position of the mother — which was also agreed — in the following terms:

G

The parties agreed that the plaintiff's familial position was that she was born on 25 January 1943, married at 23 years of age and, apart from the deceased, had eight living children, the elder five being female born between 1964 and 1972, all being married except the last who was working as a shop assistant, that the three youngest were schoolboys born between 1974 and 1977, that her husband was a rubber tapper who passed away in 1986 aged 51 years, that he was tapping for others and was as well an odd job labourer and that her deceased son was born on 2 April 1966 and killed on 5 November 1991.

H

The judge then found, as a fact, that at the time of the death of the deceased, the mother was just a housewife with three school-going children, and that she had been in receipt of a sum of RM750 per month from the deceased, of which she had spent half on herself, and the other half, on these children.

I

In considering the submissions of counsel, the judge drew attention to the undoubted fact that the *sole question* for his determination — and this had been *agreed* by counsel — was this: What was the appropriate *multiplier* to apply in quantifying the plaintiff's claim for loss of support under s 7(3) of the Act?

More particularly, what the judge said regarding the rival contentions of counsel, was this:

Both counsel agreed that the deceased was in good health for the purpose of proviso (a) to s 7(3)(iv) of the Act and that only the multiplicand was in issue and in this regard that the three youngest children only were under the mother's support at the time her son was killed. Counsel for the plaintiff submitted that the multiplicand should be RM750 per month whereas counsel for the defendants suggested a multiplicand of RM250 to RM300 arguing that what the plaintiff had suffered was the loss of the support given by the deceased, the action was for the benefit of the mother of the deceased, that on her evidence of the money she received from the deceased she spent about half on herself and half on her three children and accordingly the only loss she had suffered was the amount she spent on herself.

The judge next construed s 7(3) of the Act in this way:

... it is significant that s 7(3) was amended with effect from 1 October 1984. The amendment introduced a new expression 'loss of support' and it is significant that that expression is preceded by the word 'any'. The old s 7(3) provided for damages for loss resulting from the death whereas the new s 7(3) provides for damages for any loss of support suffered. As I see it the word 'support' should not be restricted to food or sustenance for the plaintiff but should equate with the pecuniary benefit the plaintiff received from her son so as to enable her to lead a certain life-style. He was obviously a dutiful and loving son. He relieved his mother of the necessity of going out to work as a rubber tapper or engage in similar arduous labour. He specifically stopped her from working. Instead he provided her with funds not only to maintain herself but also to enable her to carry out the duty that had befallen her on the demise of her husband, namely, being responsible for the support, health and education of the minor children. See ss 3 and 6 of the Guardianship of Infants Act 1961. With the son's death the plaintiff's life-style has been taken away from her. She has had to go out and work. Accordingly, in my view, she has suffered loss of support to the extent of the money the son gave her, namely, an average of RM750 per month. What she chose to do with the money her son gave her should not be the concern of the defendant tortfeasors. The measure of damages is the pecuniary loss suffered by the plaintiff as a result of the death of her son. The pecuniary loss is the actual benefit of which the plaintiff has in fact been deprived. So said the Federal Court in the case of *Yap Ami & Anor v Tan Hui Pang* [1982] 2 MLJ 316 at p 320.

To put the matter in perspective, the provisions of the Act which it would be convenient to reproduce at this stage, are sub-ss (1) and (2) of s 7.

The provisions read as follows:

- (1) Whenever the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death has been caused under such circumstances as amount in law to an offence under the Penal Code.
- (2) Every such action [referring to an action under s 7(1)] shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

A It is obvious that the only persons qualified to benefit in an action under s 7(2) of the Act, are the persons specified therein, so that brothers and sisters of a deceased bread-winner would be excluded.

In the present case, therefore, only the mother of the deceased would qualify to benefit in an action for loss of support under s 7(2).

B Having said that, the question of substance regarding this part of the case, was whether, having regard to the mother's admission that of the RM750 per month which she had received from the deceased, she had spent about one half on herself and the other half on her three school-going children, her claim for loss of support under s 7(3) of the Act was thereby limited to the amount she had spent on herself and no more or
C whether it could be increased, to include in addition, what she had spent on her children?

In my view, the plain, ordinary and grammatical meaning of the expression 'any loss of support suffered' appearing in s 7(3), must refer to
D the loss of support suffered by 'the party for whom and for whose benefit the action is brought'. In other words, the loss suffered must be personal to the class of dependants specified in s 7(2) so that a loss suffered by any other person not falling within that class must be excluded.

Having regard to the mother's admission aforesaid, the loss of support suffered by her was RM375 per month only. For the court to increase the
E value of the loss of support to RM750 per month, by adding the sum that was spent by the mother on the three school-going children, to the sum she had spent on herself, would amount to departing from the plain, ordinary, and grammatical meaning of the statutory language of s 7(2).

The fact that the deceased had provided his mother with funds not
F only to maintain herself but also to enable her to carry out the duty imposed upon her by ss 3 and 6 of the Guardianship of Infants Act 1961, on the demise of her husband, namely, being responsible for the support, health and education of the three school-going children would, therefore, afford no grounds to justify the court in expanding the class of person
G specified under s 7(2) as being entitled to make a claim for loss of support. The defendant tortfeasors can in no way be saddled with the obligations of the mother under ss 3 or 6 of the Guardianship of Infants Act 1961, simply because there is no legal basis for doing so.

Additionally, a claim to increase the value of the loss of support
H based upon the consideration of the obligations of the mother under ss 3 and 6 of the Guardianship of Infants Act 1961, would not have been reasonably foreseeable by the defendant tortfeasors and would, therefore, be bad for remoteness. (See *Overseas Tankship (UK) v Morts Dock and Engineering Co (The Wagon Mound)* [1961] AC 388; [1961] 1 All ER 404; [1961] 2 WLR 126.)

I I, therefore, concur in the view of the majority of the members of this court on this point, namely, that having regard to the mother's admission, the value of the dependency in this case should be reduced from RM750 per month to RM375 per month.

I now turn to consider a separate point of law advanced by counsel for the defendants, before us. A

It was submitted, contrary to what had been conceded by counsel for the defendants in the court below, that notwithstanding the provisions of proviso (d) to s 7(3)(iv) of the Act, the court still retains a *discretion* to reduce the number of years of purchase, to a period less than 16 years, to provide for contingencies, such as the probability of the deceased marrying had he not died in the accident, in which event, the contribution made by the deceased to his mother, would have ceased or been considerably reduced. B

The provisions of s 7(3)(iv) and the proviso (d) thereto read as follows: C

7(3) The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1). D

Provided that —

...
(iv) in assessing the *loss of earnings* in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall: E

...
(d) take into account that in the case of a person *who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16*; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2. (Emphasis added.) F

I regret I have to part company with the majority of the members of this court and say that I cannot accede to the submission of counsel for the defendants regarding this part of the case as, to do so, would be to fly in the face of the mandatory provisions of proviso (d) to s 7(3)(iv) of the Act, which fixes the multiplier at 16 years in cases such as the present. G

To my mind, it is manifestly clear, that in enacting the detailed provisions of proviso (d) to s 7(3)(iv), Parliament had intended to take away the discretion of the court to select the appropriate multiplier, in assessing loss of earnings of a deceased person in respect of any period after his death, for purposes of a claim for loss of support under s 7(1). H

If counsel for the defendants were correct in his contentions, regarding this part of the case, then the court could also, in an appropriate case, in the exercise of its discretion: I

- A (1) in the case of a deceased person of the age of 30 years and below, *increase* the multiplier beyond 16 years; or
- (2) in the case of a deceased person of the age range extending between 31 years and 54 years, *ignore* the statutory formula provided and select an appropriate multiplier; or
- B (3) in the case of a deceased person of the age of 55 years and above, select an appropriate multiplier, when assessing loss of earnings in respect of the period after the death, although proviso (d) impliedly *debars* the court altogether from making any such award.

C In other words, the effect of counsel for the defendants' submissions, if upheld, would mean that the court could, in any of the above cases, *rewrite the statute*, or *brush aside explicit statutory provisions* and select, in the exercise of its *discretion*, a suitable multiplier. This proposition is, in my view, quite untenable, and has only to be stated to be rejected, bearing in mind that when a question of statutory interpretation arises, the duty of the court is simply to give effect to the will of Parliament as expressed in the law. 'The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation'. (See *West Coast Hotel Co v Parrish* (1937) 300 US 379 at p 404 per Sutherland J.) Similarly, Cardozo J said in *Sunprinting and Publishing Association v Remington Paper and Power Co Inc* (1923) 130 NE 470 at p 471: 'We are not at liberty to revise while professing to construe'.

E I recognize that the application of a fixed multiplier of 16 years in the present case, may be somewhat hard on the defendant tortfeasors. However, where the enactment of the legislature in clear and unequivocal language is capable of only one meaning, it must be enforced however harsh the result may be. (See *Cartledge v E Jopling & Sons Ltd* [1963] AC 758; F [1963] 1 All ER 341; [1963] 2 WLR 210.) Nor, for that matter, may the interpretation of a statute be approached by the court taking into consideration notions as to what is just and expedient. (*Gwynne v Burnell* [1840] 7 Cl & Fin 572 per Goleridge J.) As Viscount Birkenhead LC put it in *Sutters v Briggs* [1922] 1 AC 1 at p 8:

G The consequences of this view will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculations as to the probable intention of the legislature. Where, as here, the legal issues are not open to serious doubt our duty is to express a decision and leave the remedy (if one be resolved upon) to others.

H Similarly, in *Stock v Frank Jones (Tipton) Ltd* [1978] 1 All ER 948 at 954; [1978] 1 WLR 231 at p 238, Lord Edmund-Davies said:

I ... dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt CJ said nearly three centuries ago '... an Act of Parliament can do no wrong, though it may do several things that look pretty odd': see *City of London v Wood* (1701) 12 Mod Rep 669 at pp 687-688. Accordingly, even if one regarded the policy implicit in [the Act concerned] as open to criticism, [if] the statutory language is clear beyond doubt ... [it] must prevail.

So, also, in *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82 at p 84, Hashim Yeop A Sani SCJ speaking for the Supreme Court said:

... it is trite law that where the words of a statute are clear there is no room for the court to go beyond the expressed language of the statute.

And, in *Magor and St Mellons Rural District Council v Newport Borough Council* [1952] AC 189; [1951] 2 All ER 839, the House of Lords held that in the construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed, and that to do so would be to usurp the function of the legislature.

I, therefore, agree with the trial judge that contingencies such as the probability of the deceased marrying had he not died in the accident and, as a result, his contributions for the support of his mother ceasing or being considerably reduced, 'have been built into the statutory formula of 16 years', and that, therefore, he was bound to adopt that statutory formula since the deceased was 25 years of age at the time of his death.

It follows, that in my view, we are not at liberty to reduce the number of years' purchase from 16 years to seven years, or at all. For the same reason, I do not consider that the court has a discretion to make any deductions from the number of years' purchase, the period for which the court might have awarded pre-trial loss of support up to the date of trial. To this extent, I would, with respect, disagree with the view of the majority of the members of this court expressed in their judgment in draft which I have had the advantage of reading.

For the sake of completeness, I must add that before us, an attempt was made by counsel for the defendants to get round the difficulty posed by proviso (d) to s 7(3)(iv) of the Act, by contending for a reduction in the award for loss of support on the ground that the court still retained a discretion to reduce the *multiplicand* as opposed to the multiplier, to take into account the likelihood of the deceased marrying had he not died in the accident. This is really an attempt to avoid the strict terms of proviso (d) to s 7(3)(iv) of the Act by a side door. If the court has no discretion to alter the statutory multiplier of 16 years' purchase on this account, for the reasons stated, then equally, it cannot do so indirectly, by reducing the multiplicand. I would, therefore, reject this branch of counsel for the defendants' submissions.

In the result, I would allow this appeal in part, to the extent only, that the judgment of the court below should be varied to reflect my conclusions as aforesaid on the issues arising for decision. I would also make no order as to costs, here, since both sides have succeeded and yet have failed.

Order accordingly.